Affirmed and Majority and Concurring Opinions filed August 31, 2010.

In The

Fourteenth Court of Appeals

NO. 14-09-00470-CV

LUKE WAYNE HARRISON, Appellant

V.

BONNY CAYE HARRISON, Appellee

On Appeal from the County Court at Law
Washington County, Texas
Trial Court Cause No. CCL5757

CONCURRING OPINION

This court correctly holds that the trial court did not err in awarding a one-half interest in the Burton property to appellee Bonny Caye Harrison as her separate property; however, the court need not and should not discuss what evidence is necessary to rebut the presumption that appellant Luke Wayne Harrison intended to gift this property interest to Bonny.

When a spouse uses separate-property consideration to pay for land acquired during the marriage and title to the land is taken in the name of both spouses, it is presumed the spouse purchasing the property intended the interest placed in the other spouse to be a gift. *Cockerham v. Cockerham*, 527 S.W.2d 162, 168 (Tex. 1975). This

presumption, however, can be rebutted by evidence clearly establishing there was no intention to make a gift. *Id*. Luke used his separate property to buy the Burton property during marriage, and title to the land was taken in the names of both Luke and Bonny. Therefore, there was a presumption that Luke intended a gift to Bonny of a one-half interest in the Burton property. *See id*. If Luke did not rebut this presumption, then the trial court did not err in finding that Luke intended to gift this property interest to Bonny. If Luke did rebut this presumption, there still is legally sufficient evidence to support the trial court's finding that Luke intended to gift this property interest to Bonny.[1] Therefore, this court need not address whether the presumption of gift was rebutted, and the majority's discussion of this issue constitutes obiter dicta.

The majority states that the cases are inconsistent as to what constitutes "evidence clearly establishing there was no intention to make a gift" such that the presumption is rebutted. *Id.* However, research reveals no inconsistency in cases either from the Supreme Court of Texas or this court. *See id*.; *Carter v. Crater*, 736 S.W.2d 775, 781 (Tex. App.—Houston [14th Dist.] 1987, no writ). To the extent cases from other courts of appeals conflict with cases from the Supreme Court of Texas and this court, this court must follow the latter binding precedent. *See Chase Home Fin., L.L.C. v. Cal W. Reconveyance Corp*., 309 S.W.3d 619, 630 (Tex. App.—Houston [14th Dist.] 2010, no pet.). If rebuttal of the presumption were necessary to the disposition of this appeal, a discussion of any conflicting opinions from other courts of appeals might be warranted. However, given the diverse fact patterns and types of testimony with which parties might try to rebut the presumption and given that this issue is not necessary to determine the appeal, the better course is to leave this issue for another day.

[1] Considering the evidence in the light most favorable to the challenged finding, indulging every reasonable inference that would support the finding, crediting favorable evidence if a reasonable factfinder could, and disregarding contrary evidence unless a reasonable factfinder could not, the evidence at trial would enable reasonable and fair-minded people to find that Luke intended to gift this property interest to Bonny. *See City of Keller v. Wilson*, 168 S.W.3d 802, 823 (Tex. 2005).

For this reason, I respectfully decline to join the majority opinion, but I concur in the court's judgment.

/s/ Kem Thompson Frost
Justice

Panel consists of Justices Anderson, Frost, and Seymore. (Anderson, J., majority).